Supreme Court, U.S.
FILED
DEC 28 1992
OFFICE OF THE CLERK

No. 92-875

In The
Supreme Court Of The United States

OCTOBER TERM, 1992

DIANE E. HONEYCUTT, Fern E. Honeycutt, Ellen Goldsworthy, Ralph Vernon Honeycutt, Calvin Guy Honeycutt, Eileen A. Honeycutt, Marjorie J. McGuire, Olin I. McGuire, Alfred W. McGuire, Shirley J. MacDonald, Margaret McCollum, Lena Nicholson, Helen Harder, Raymond Eisele, Frank Eisele, Darrell Eisele, Marie Holdren

Petitioners,

v.

JANE S. NORBECK, Trustee of the JANE NORBECK Trust dated November 20, 1963

Respondents

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

Barnaby W. Zall
Counsel of Record
Anthony J. Roda
WILLIAMS & JENSEN, P.C.
1101 Connecticut Ave., N.W. #500
Washington, D.C. 20036-4302
(202) 659-8201
Counsel for Petitioners

December 28, 1992

In this case, the Court is faced with two possible federal policies:

The policy enunciated in Respondent's Opposition to the Petition for Certiorari (protection of the federal government from unqualified mineral lessees) is completely fulfilled by the statute identified in the Petition without forging new federal common law to supersede state law rights.

The federal policy of nonentanglement in private disputes over assignments, however, would be eviscerated by the Montana Supreme Court's decision and Respondent's characterization of federal law.

I. RESPONDENT'S POSITION IGNORES FEDERAL REGULATIONS.

Respondent argues that the "federal policy in the Mineral Leasing Act is against using state law to enforce assignments that have been rejected by the Secretary." Brief in Opposition, P.18. Respondent's position ignores explicit federal regulations and court decisions.

The regulations implementing the Mineral Leasing Act state, in part: "Transfers [of record title or of operating rights] are approved for administrative purposes only. **Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.**" 43 C.F.R. § 3106.7-1 (1991)(emphasis added).

As this Court said in *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63, 70, n. 8 (1966): "Where there is a private dispute as to the validity or effect of an assignment [under the Mineral Leasing Act of 1920], the Secretary does not decide the question and he will not approve the assignment or take other action until the parties settle their dispute in court."

Even the District Court in this case found that "First the Court determines as a matter of law that the rejection of the assignment of federal lease in this case does not necessarily render the assignment void as between the parties." Appendix, P. 12.

II. THE FEDERAL GOVERNMENT IS PROTECTED.

Respondent posits a danger to the federal government if state law controls assignments between private parties involving a federal lease. Brief in Opposition, P. 29. In fact, the federal government is more than adequately protected by statute. Rather than indirectly violating federalism through an unwarranted and unilateral intrusion into state law rights, Congress chose a more direct protection where due process would be respected.

Sections 30 and 31 of the Mineral Leasing Act (41 Stat. 437) provide for forfeiture or cancellation of any lease issued. The federal government does not need Respondent's "belt and suspenders" approach of nullifying assignments otherwise valid under state law. (In addition, contrary to Respondent's concern over continuing liability by the original lessee after the assignment was not approved by the Secretary, Section 30 also provides for voluntary relinquishment by any lessee.)

III. RESPONDENT'S THEORY POSES A DANGER TO THE FEDERAL GOVERNMENT.

Unlike the "non-entanglement" approach explicitly stated in the regulations and upheld in *Wallis*, Respondent's theory **would** endanger the federal government. If the Secretary's action in administratively registering a lease assignment were conclusive on private parties' rights, the federal government would quickly become entangled in every dispute over private parties' rights.

If a private assignment were rejected, the Secretary would be required to participate to explain why. If a private assignment were accepted by the Secretary, but later challenged, the Secretary's actions would be brought in as evidence of validity. Either way, the Secretary would quickly become entangled in disputes which are no concern of the federal government, and which the regulations explicitly seek to avoid.

The better public policy is that stated in the regulations: **non-entanglement**. "In the absence of such a rule, the Government would be in danger of becoming embroiled in conflicting claims, with delay and embarrassment and the chance of multiple liability." *Martin v. National Surety Co.*, 300 U.S. 588, 594 (1937), *citing*, *Hobbs v. McLean*, 117 U.S. 567, 576 (1886).

IV. THERE IS NO SEPARATE OR INDEPENDENT STATE LAW GROUND FOR DECISION.

Respondent says the 16th Judicial District Court's finding of laches is a bar to review (the Montana Supreme Court never mentioned laches, but did affirm the lower court). The finding of laches, however, was neither separate nor independent of the misinterpretation of federal law by the state courts.

As the District Court stated in its description of the first factor it considered in applying laches: "In addition, Mrs. Crawford did nothing to perfect her interest in the lease, **i.e., obtain the consent of the Secretary of the Interior.**" Appendix, P. 15 (emphasis added). In fact, the undisputed fact is that Mrs. Crawford registered the lease in the land records, all she was required to do to perfect her interest in the lease **under state law.** Petition for Certiorari, P. 4.

CONCLUSION

This Court should issue a summary opinion in this case instructing the Montana Supreme Court to follow *Wallis*. In the alternative, this Court should grant a petition for certiorari to the Montana Supreme Court to allow a full review of these important points.

Respectfully Submitted,

Barnaby W. Zall
Counsel of Record
Anthony J. Roda
WILLIAMS & JENSEN, P.C.
1101 Connecticut Ave., N.W. #500
Washington, D.C. 20036-4302
(202) 659-8201
Counsel for Petitioners